

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANK MADDLE

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

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NO. 2:18-cv-00088

TO: The Honorable Waverly D. Crenshaw, Jr., Chief District Judge

REPORT AND RECOMMENDATION

For the reason stated below, the Magistrate Judge recommends this case be dismissed without prejudice for failure to obtain service of process in accordance with Fed. R. Civ. P. 4(m) and to obey Court orders under Fed. R. Civ. P. 41.

I. Background

The Plaintiff filed a complaint against the Social Security Administration for review of a denial of benefits on October 13, 2018 (DE 1). The Plaintiff also filed an application to Proceed in Forma Pauperis (DE 2) which was granted on October 17, 2018. The Docket Sheet further reflects that summonses were issued to the Social Security Administration, U.S. Attorney and the U.S. Attorney General with a notation they would be picked up by counsel (DE 5). A review of the case by the undersigned on June 17, 2019 (DE 6) reflected no return of summonses had been filed and that it appeared they remained unserved. Counsel was reminded that under Rule 4(m) the case was subject to dismissal if summonses were not served within 90 days and he was given until July 1, 2019 to show cause why I should not recommend dismissal of this case for failure to serve process and prosecute or to justify an extension of time to obtain service of process.

As of the date of this Report and Recommendation Plaintiff's Counsel has provided no response.

II. Legal Discussion

Under Fed. R. Civ. P. 4(m) Plaintiff has 90 days with which to obtain service of process. The rule specifically provides the Court must dismiss the action without prejudice after notice to the Plaintiff or that service be made within a specific time. The Court has the authority for good cause shown to extend the time of service for an appropriate period. In this case, the Plaintiff was specifically notified of the requirement of Rule 4(m) on June 17, 2019. Since that time the Plaintiff has taken no action to provide the Court with the proof of service of process or a request for additional time to obtain service of process. Summonses were prepared for the Plaintiff's Counsel, so service was not difficult, it simply required they be mailed to the three Defendants required to be served. As of the date of this Report and Recommendation, Plaintiff's Counsel has not provided any justification for the failure to obtain service or to provide any basis for a request for additional time to serve process.

A Court must be able to control its docket and this case cannot proceed until the appropriate Defendants are served.

III. Recommendation

For the reasons stated above, the Magistrate Judge recommends this case be dismissed without prejudice¹ for failure to obtain service and to obey Court orders.

Any party has fourteen (14) days from receipt of the Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in which to file any responses to said

¹ Even though the dismissal under Rule 4(m) is without prejudice it is possible that the plaintiff will be preventive from refiling his complaint due to statutory and regulatory statutes of limitations.

objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation.

Respectfully submitted,

/S/ Joe B. Brown

Joe B. Brown

United States Magistrate Judge